



Family Law Section of the State Bar of Texas
Texas Family Law Foundation



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To: **Honorable Members of the Texas Legislature**

From: Jimmy Vaught, Chair
Family Law Section of the State Bar of Texas

Diana Friedman, President
Texas Family Law Foundation

During the Texas Legislature's last two Regular Sessions, bills have been filed to prohibit certain foreign or religious laws or court decisions from being applied in family law cases.

We want you to know that your colleagues who served in past Texas Legislatures have already given Texas family law judges the tools they need to protect Texans from laws and decisions of countries and cultures that may be abhorrent to our values. Attempts by other states' legislatures to target a specific religion, or the enforcement of religiously-based agreements between family members, have been found unconstitutional and unworkable. You'll be happy to know that, working with Texas family lawyers, prior Texas Legislatures have made such legislation unnecessary in Texas.

On January 29th, Fox News commentator Judge Andrew Napolitano explained the way in which private faith-based tribunals are allowed to help their adherents resolve disputes without going into real courts—and the legal limits on those tribunals. You can watch his explanation here:

<http://insider.foxnews.com/2015/01/29/islamic-law-dallas-judge-napolitano-explains-how-sharia-court-texas-operates>

Let us explain how thoroughly the Legislature has already protected Texans. As a general principle, Texas courts are not required to enforce any family law-related contract, agreement, foreign or religious law or court decision that violates *fundamental principles of human rights or the laws or public policy of this state*.

Examples of this principle are found in Family Code Chapter 153. Family Code Section 153.0071 provides that a judge may refuse to enter an order on any arbitration decision in a custody or visitation dispute if the arbitrator's decision is determined not to be in the child's best interest. (Arbitrations sometimes occur outside the Texas court system.)

Family Code Section 153.502(c) addresses child custody determinations made in a foreign country. Under Section 153.502(c)(4)(J), (international abduction of a child by the child's parent), courts may prevent human rights and public policy violations that would result from, for example:

- arranged marriages;

- a lack of freedom of religion;
- subjecting a child to dangerous conditions involving child labor;
- exposing a child to a jurisdiction with a lack of child abuse laws;
- female genital mutilation; or
- subjecting any person to any form of slavery.

Family Code Section 162.023(a) provides protections against foreign adoption orders rendered to a resident of this state that violate fundamental rights or Texas law or public policy. Texas courts may also refuse to enforce contracts and agreements that are unconscionable or otherwise unenforceable under Family Code Sections:

- 4.006 (premarital agreements);
- 4.105 (partition or exchange agreement between spouses); or
- 4.205 (agreements to convert property to community property).

In addition, Section 36.005, Civil Practice and Remedies Code, (non-recognition of foreign judgments in civil cases) provides ten grounds on which a court may refuse to recognize *any* judgment of another nation's courts.

Finally, Texas law implements a number of international treaties to which the United States is a signatory that address many issues involved in family law cases, including the:

- Hague Convention on the Civil Aspects of Child Abduction;
- Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions; and
- Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

As a practical matter, these laws--and the U.S. and Texas Constitutions--have prevented the kinds of concerns about which other states have attempted to legislate in this area. *As a result, there are no reported Texas court decisions in which any of those concerns have been realized.*

The Family Law Section of the State Bar of Texas and the Texas Family Law Foundation exist to keep the law up-to-date in a world in which Texas is a major global actor. That is why Texas family lawyers and prior Texas Legislatures have been successful in addressing these issues *before* problems arose.

Members of the Family Law Section and the Texas Family Law Foundation will be in attendance again every week to answer questions and on this and other important areas of Texas family law.

Thank you for your service to Texas.